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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,710	03/07/2001	Sylvia Burssens	2364/100	3986

7590 02/10/2003
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EXAMINER

COLLINS, CYNTHIA E

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 02/10/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/673,710

Applicant(s)

BURSENS ET AL.

Examiner

Cynthia Collins

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Supplemental Election/Restrictions

Applicant's election of Group I in the response filed December 2, 2002, paper no. 11, is acknowledged. Upon further consideration, the previous restriction requirement, mailed September 25, 2002, paper no. 9, has been withdrawn in favor of the restriction requirement set forth below. The Office regrets any inconvenience to the Applicant.

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-12 and 17-31, drawn to a method for obtaining plants tolerant to abiotic stress conditions by introducing into a plant cell a nonphosphorylatable CDK mutein nucleic acid molecule.

Group II, claim(s) 1-6, 13-14 and 16-31, drawn to a method for obtaining plants tolerant to abiotic stress conditions by introducing into a plant cell a CDC25 nucleic acid molecule.

Group III, claim(s) 1-6, 13 and 15-31, drawn to a method for obtaining plants tolerant to abiotic stress conditions by introducing into a plant cell a Wee-kinase nucleic acid molecule.

Group IV, claim(s) 1-6, 13 and 15-31, drawn to a method for obtaining plants tolerant to abiotic stress conditions by introducing into a plant cell a MIK nucleic acid molecule.

Group V, claim(s) 1-6, 13 and 15-31, drawn to a method for obtaining plants tolerant to abiotic stress conditions by introducing into a plant cell a MYT nucleic acid molecule.

The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking the inventions of Groups I-V appears to be the introduction into a plant cell of a nucleic acid molecule that results in the presence of a CDK protein that is not susceptible to inhibitory phosphorylation. However, the introduction into a plant cell of a nucleic acid molecule that results in the presence of a CDK protein that is not susceptible to inhibitory phosphorylation is obvious or anticipated over Hemerly et al. (The EMBO Journal, Vol. 14, No. 16, pages 3925-3936, 1995, Applicant's Search Report), and therefore does not constitute a special technical feature as defined by PCT Rule 13.2, because it does not define a contribution over the prior art. Furthermore, the methods of Groups I-V employ structurally and functionally distinct nucleic acids encoding structurally and functionally distinct polypeptides. While the nucleic acids encoding the CDK mutein, the CDC25 protein, the Wee-kinase protein, the MIK protein and the MYT protein share a common activity, namely resulting in the presence of a CDK protein that is not susceptible to inhibitory phosphorylation, this common activity is not a special technical feature, as discussed *supra*. Additionally, CDK, CDC25, Wee-kinase, MIK and MYT do not share a common structure or significant structural element that is a contribution over the prior art, and thus CDK, CDC25, Wee-kinase, MIK and MYT do not constitute a special technical feature. Furthermore, Applicant is reminded that nucleotide

sequences encoding different amino acid sequences are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute **independent and distinct** inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq. This requirement is not to be construed as a requirement for an election of species, since each nucleotide and amino acid sequence is not a member of a single genus of invention, but constitutes an independent and patentably distinct invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Remarks

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Collins whose telephone number is (703) 605-1210. The examiner can normally be reached on Monday-Friday 8:45 AM -5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on (703) 306-3218. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

CC

February 2, 2003

DAVID T. FOX
PRIMARY EXAMINER
GROUP 180/638

A handwritten signature in black ink, appearing to read "David T. Fox", written over the printed name and title.